

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
MARCH 18, 2009**

**CALL TO
ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Gordon Cross, George Culpepper Jr., Frank DeKort, Mike Mower, Randy Toavs and Jim Heim. Marc Pitman had an excused absence. Rita Hall was absent. Alex Hogle and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were 40 people in the audience.

**APPROVAL OF
MINUTES**

None.

**PUBLIC
COMMENT
(not related to
agenda items)**

Charles Lapp, 3230 Columbia Falls Stage Rd, commented on last week's meeting and the concern of Whitefish lakeshore regulations. The discussion centered on the thought there were no cohesive regulations for different lakes in the area. He brought up the Flathead County Lake and Lakeshore Protection Regulations which covered lakes and lakeshores in Flathead County. He asked the board to look into the regulations for adoption of Whitefish Lake.

**HASKILL MTN.
RANCH
(FPP 08-26)**

A request by Florida Flathead, Ron Swaine/Principal, for Preliminary Plat approval of Haskill Mountain Ranch, a seventy (70) lot single-family residential subdivision on 529.891 acres. Lots in the subdivision are proposed to have individual water and sewer systems. The property is located off of Browns Meadow Road.

STAFF REPORT

Alex Hogle reviewed Staff Report FPP 08-26 for the Board.

**BOARD
QUESTIONS**

Culpepper wanted to clarify the project under consideration was subject to the previous subdivision regulations, not the newest subdivision regulations.

Hogle said he was correct. The applicable regulations were the August of 2007 regulations.

**APPLICANT
PRESENTATION**

Erica Wirtilia, represented the applicant, thanked the board for hearing the project tonight. She introduced people involved in the project. She said this was a new proposal. She gave the

history of the project and presented a power point presentation. The power point went over the work already accomplished on the project, the topography, and the plat.

Carlo Arendt from PBS&J, went over data analyzed for the positions of the drain fields and wells for the subdivision.

Cristy Wells represented WMW Engineering who was responsible for the roads and drainage on the project. Browns Meadow Road was approved by the Flathead County Road Department and built to their standards. The road was now the responsibility of the county to maintain. The internal roads were constructed to 2006 subdivision regulations with a 20 foot travel surface. They had 22 foot width travel space. She went over how they arrived at their drainage plan and what had been done already. She expected to fine tune the plans. As it was now, it was conceptual, but adequate for the subdivision.

Wirtila continued her power point presentation which concerned precautions taken for the local wildlife, the density of the development, and improvements in technology to measure the slope of the property. She handed out packets to the board and explained them. She talked about several conditions in the staff report, disagreed with some of them and offered alternatives or asked for relief from them. She spoke about the emergency egresses and easements and explained them. The applicants had voluntarily offered to put on the final plat and covenants, no guest houses allowed. She also brought up findings of fact she did not agree with and offered alternatives.

Neil Nash, part of the development team from Pensacola FL, went over the history of the application. He said they had met with the Kila coalition several times to see if something could be worked out so the development could move forward. At his development team's request in 2007, they went through mediation with two members of the coalition. Several times he asked what would make the coalition happy, and did not receive any response. After that in the later part of '07, he and another partner from the development team flew up to meet with the coalition. He again asked what the coalition wanted. They had a lot of discussion, but did not receive a clear answer. They have had nine meetings and or memorandums which went back and forth, with no resolutions but a lot of discussion. One of the things that was resolved was the employment of new consultants concerning sanitary and water issues. They also made no lot

less than 5 acres in an effort to be sensitive to the neighborhood plan in effect in the Kila area. He said they incorporated wildlife corridors to address the coalition's concerns for wildlife as well as to establish wetlands. They also moved the recharge station to satisfy some of their concerns. They modified the covenants to include perimeter fencing. They also eliminated guest houses and central garbage collection, and reduced the number of lots. He felt they did everything they could to come up with a compromise. He was here tonight to ask for the board's approval on this project. He said he was not from around here but had been told this was the most comprehensive preliminary plat application that had ever been submitted. He hoped it was and that he set a standard for all applications to follow. He asked the board to look at fact, not emotion and look at what had already been done.

BOARD QUESTIONS

Culpepper asked if the applicants received the same public comments the board received.

Wirtila said yes.

Mower asked Arndt how many test holes were actually monitored.

Arendt and Mower discussed how many of the test holes were dry and during what periods and the level of water availability.

Cross asked about water availability and the statement that there was enough water for a single family dwelling but not that there was adequate water for 70 single family dwellings.

Arendt said he had drilled 149 holes, one well was tested for 24 hours and explained the tests done to determine if the aquifer was a reliable source of water and the perimeters of the aquifer. There would be more information in the DEQ application.

Cross said then at this point, Arndt could not give a professional opinion of whether the aquifer was adequate.

Arendt said he did not see a problem with the aquifer at this point in time.

Cross asked Wirtila about her statement that the gate at the perimeter was there for public health and safety reasons. He asked how she came to that determination.

Wirtila said it was for protection of property and homes while residents were away so there was not access for public vandals.

Cross asked her to clarify what she meant about improving the egress to the best of the applicant's ability.

Wirtila said it was their intent to improve the road, but if the fire or the forest service said they could not, then their hands would be tied. They were assuming that everything would fall into place and that there would not be an issue. But if there was, she wanted that stipulation in there.

Mower said one of the issues on a past similar application was that the forest service would not grant access in perpetuity.

Wirtila said if she walked into the forest service today and asked to use the forest service road for an emergency egress, they would not do that.

Mower said that was one of the big issues, because the applicant could build it, use it and maintain it, but if the forest service decided they did not want the applicant to use it anymore...

Wirtila said the difference in this case was that they have existing easements in place cannot be abandoned without mutual consent, and it was a recorded document signed by the chief of that time.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Jeff Hutten 1232 Truman Creek Road spoke on behalf of the Kila Smith Lake Community Development Coalition and thanked Jeff Harris and planning staff for the great work they had done. The coalition was not against growth, they were against poorly designed and poorly situated developments which had the potential to greatly impact water quality, natural resources and local services. He said this proposal was essentially the same as the previous proposal with a few changes. They were against this application basically because of the number of lots and the impacts were huge. They had tried to work with the developers. He said they told the developer what they wanted, which was less lots. They could not say how many less. The number of 50 total lots was mentioned and the coalition did agree to that number. He said most all of the problems with the development stem from

high density. He said the minimum lot size of 5 acres was in the regulations for shallow ground water. He was happy they stipulated no guest houses. The coalition still asked for denial based on the storm water drainage system, the shallow water and the impacts on wildlife. He mentioned the emergency egresses and gave a brief history of them. Both of the egresses end up on Brown's Meadow Road. Effectively, there was only one exit on that side of the development. On the other side, there were two exits which were separated by only 150 feet so they were essentially one exit. His concern was exits in case of fire. He mentioned two language changes and explained why they wished the changes. He said in his opinion, the exits were the most serious issue. He also brought up the tanker recharge system, the fact it was in a cul-de-sac and only held 30,000 gallons when the recommendation was for 2,500 gallons per lot which would make the recommended amount 175,000 gallons. The DNRC also recommended a hydrant system. He voiced a concern that the applicant was replenishing the recharge off an intermittent stream and come August when the peak of fire season hit, the stream would most likely be dry and they would have no way to refill the tank. He thought they needed a water right or permit to store that much water.

Craig Kiser, 675 Springhill Road, spoke about the shallow ground water in the area. He went over the statistics of how deep the ground water was. The storm water drainage plan never had a permit, they filed for one, in 11/07, DEQ wanted more information, they were never given it and then they cancelled the permit in 12/07. He believed it was 11 miles from the fire hall, not six as quoted by the applicant.

Charlie Johnson, 540 Log Cabin Lane, is a neighbor to the development and had supported the subdivision from the beginning. He and his neighbors were never asked to participate in the Kila coalition even though he was directly affected by the development. His communication was done directly with the developer. He was disappointed with the way the coalition had handled the situation. His impression was that since he went along with the development, the coalition wanted nothing to do with him anymore. He felt the process was skewed. He mentioned fire access and the fact that the forest service would not stop people from using their road for emergency access. He said they did have a choke point in their roads. He also did not think that the forest service would abandon an easement knowing a subdivision was there. He thought this was a good

subdivision and to turn this down would be erasing any standards in Flathead County.

Diana Sande, 675 Springhill Road, had a problem with density of the subdivision. All she wanted was reasonable density, a public water system and public sewer system. If those three things were met, then she would be in favor of the development. The wildlife corridor started out at 400 feet, and then went to 100 foot corridors around the streams. She did not believe that would be enough. She said the density would make it more like the city. She did not want to live in the city. Elk were much larger than alligators and snakes and required much more room. She felt it would be hard to comprehend how much room they actually require if the developers had no personal experience of them. She thanked the board and staff for their time.

Ann Brown, 116 Stone Eagle Lane, Kila, moved out to Kila five years ago and had noticed more traffic on the road. She thought the county needed to take into account the infrastructure needed to support this high of a density development in this area. She described the road and area. She urged the county to improve the infrastructure before it would approve a development like this.

Cindy Ercoline, 2180 Coon Hollow Road, Kila, has been a resident property owner in Kila for over 30 years. She thanked staff for their consideration of the proposal and the planning board members. She spoke about the variances. The coalition agreed with the planning office findings on all three accounts. They also concurred with two and three being denied. She showed on a map how much of the internal roads in the development were actually Plum Creek logging roads. She said roads which were adequate for logging purposes were not necessarily adequate for residential uses. She was at the meeting 9/3/08 and said the application was much improved. The issue with the guest houses was huge. She wanted much lower density which was needed for the land to be able to support the people. She wanted a community well and sewer services. Without these, she believed the application should be denied.

Valerie Kurtzhals, 665 Tranquil Valley Trail, Kila spoke about density as well. She said the applicant presented that the density of the development was less dense than what was already in place. She believed the data was flawed because the

applicant was selective in which parcels were included in the plan which skewed the results and also caused confusion over what was legal, salable parcels. They believed that the analysis was done on tracts, not legal parcels and the tracts could not be sold separately. Based on this, they hoped the board would disregard that part of their analysis. She said rural and remote areas of growth would be guided by the Flathead County Growth Policy even though it was a non regulatory document. There were several rural policies which were not followed in this application. She also wanted to address the fact that a 70 home subdivision placed 18.5 miles from services would place an undue amount of stress on already burdened taxpayers. She was not against development, she wanted to see something parcel appropriate. She thought the most logical thing to be done was to lower the density. She hoped the board would consider denial.

David Smirnow, 2610 Truman Creek Road, Kila, spoke about the emergency roads and fire. He is a doctor who works with burn victims and autopsies burn victims. He had concerns about the quality of the roads, whether they would be maintained, and would they be maintained as open in perpetuity. He did not want to deal with the burn victims which would result from the lack of emergency exits in case of a fire.

Don L. Radison, 1670 Sherman Road, built the roads in the subdivision. He brought up other existing subdivisions which had similar problems of access. He approved of the subdivision.

Greg Carter, 307 Spokane Ave, Whitefish, was there to represent the largest private contiguous land owner in Kila, the land was directly adjacent to the project. Based on what they had observed, they were in total support of this project. He had only heard of one person on Brown's Meadow Road. The others were on Truman Creek Road. This development would be a stimulus to the area.

Jeff Raper, 719 Kalispell Ave, Whitefish, said the first rule of thumb was to look at the density of zoning. In an area which was unzoned, there were no density regulation guidelines. The only thing an applicant could turn to was the subdivision regulations and meet and comply with those regulations. In this situation, the applicant's materials had exceeded those regulations for preliminary plat approval. On that basis he felt the board should grant approval.

Charles Meyer, 22077 Rollins Lakeshore, Rollins, has a tree farm contiguous to the property. He found there were a lot of problems with the original application. When he talked with members of the coalition there was always the statement there would be a subdivision. The coalition just wanted the developer to do it right. He said some people were for the subdivision even when it was wrong and they had a road paved for them. There were a few things which needed to be adjusted. He asked the board to be careful and be specific about what needed to be done.

Mayre Flowers, Citizens for a Better Flathead, P O Box 771, Kalispell, brought up the density issue again. She wanted to add to the wetland issues that buffers needed to be a minimum of 100 feet. For wildlife, they needed to be 300 feet. On the wildlife issue, she brought the board's attention to the lack of data concerning the impact of the development on the local wildlife. The wildlife corridors had no studies which demonstrated that they were adequate for the local wildlife. There were no setbacks from the wetlands. She wanted to applaud the developer for the fact they removed guest houses from the lots. The removal of central garbage collection had its pros and cons. It would be wise to gather more information concerning garbage collection. She also talked about fire issues and the fact the recharge station would not be adequate. The board needed to be requiring a public well for a subdivision this size. She wanted to make sure the developers acquired the proper permits for water. She handed out Judge Lympus' ruling on the previous application and written comments.

Arrow Anderson, 170 Lonepine Road, Kalispell, 5th generation Montanan, had seen several subdivisions which he wanted to see disappear, but this was not one of them. This was a property which was not prime farmland, had been logged to death and he thought it would be a good use for the land. He wanted the board to consider approval of the proposal.

John Ledgerd, 220 Twin Bridges Road, Whitefish, commented on the current fire danger and said if the subdivision was approved, the property would be cleaned up and remove 500 acres of fire hazard. It would be in the best interest of the owners to clean up their parcels. It would mitigate the fire danger for the neighbors of the property.

APPLICANT REBUTTAL

Wirtila brought to the board's attention the US Forest Service Management Plan. She discussed the plan and how the plan applied to the property. The fire suppression system gallon capacity was the suggestion of the Smith Valley Fire Department. They did submit a lot of ground water information. The reason data was submitted in two sets was because they submitted data that was applicable to the project and data needed to review for the sanitary facilities and to get a good idea of what was going on. The Kila neighbors asked that they submit all of their groundwater information, so they accommodated them. They were fine with the 40 foot buffers on the wetlands suggested in the conditions. They anticipate a four to 6 per cent growth rate. This would be four to 6 homes on the development a year. They have a build out of 25 years. Many of the properties may be bought as an investment or second home so she assumed the area would see an increase in the tax base without a lot of taxation of the services. She did not think there would be a huge influx of kids going to Kila school. She named off other subdivisions which were similar to this project and the fact they did not tax the existing services. The wildlife corridors were drawn up and worked on with the help of a wildlife official. She reiterated what she termed as open space or functioning open space.

Ed Spotts, senior soil scientist with PBS&J, summarized the information they used to site their findings and the procedures used.

Arendt spoke about the additional tests which would be performed for their DEQ application.

Mower asked if the fractured rock aquifer was interconnected over the 500 acres.

Arendt said it most likely was. He was not able to answer yet whether or not two neighboring wells would have an impact on each other. They would find out that answer when they performed more tests.

Mower said it was his understanding that it was very hard to predict the impacts on a well from another one half a mile away.

Arendt said it was. He explained why it was difficult to predict the performance.

Culpepper asked where the applicant was in the process concerning DNRC.

Arendt said they had not submitted anything to DNRC. All their submittals go to the DEQ for water and sanitation.

Cross asked if Arendt could make a comment on the water rights needed for the water containment facility.

Arendt said he was not the one to ask on that question, but he had talked to DNRC about this issue. He said if the applicant created a storage system with an outflow, they would need a water right for the volume of water in the tank. If they did not need a storage facility for the water out of the stream, then they did not need a water right.

Toavs asked if both the wells were 500 feet.

Arendt and the board discussed the wells.

Mike Papidalus, Pensacola FL, explained how he put together the density map presented in the Kila area concentrated on the Brown's Meadow Road.

Shawn Frampton, disagreed that the board should consider Judge Lympus' ruling on the previous application. It was a separate application. This application was complete. The easements were what they were. There were no comments from the forest service concerning the easements.

**STAFF
REBUTTAL**

Hogle wanted to point out to the board that in the packet of information before them on the last page, was a density map. He spoke about more appropriate clustering of the houses and his concern about the individual lot owners having pickup of garbage. The containers used by Evergreen Disposal were not wildlife proof and the wildlife would become accustomed to having the containers available to get into. He thought a central collection would be better and more able to be wildlife proof. As far as bus services, there needed to be a bus stop, not necessarily for Kila schools, but for Flathead High School. Brown's Meadow Road was plowed after major storms, but when the development went in, the road & bridge department would need to reprioritize their schedule which would impact local services. He explained why he suggested lot 9 be removed from the available lots. He went over the recommended suggestions

for findings of fact and conditions submitted by the applicant and explained why he wanted them to remain as they were.

**MAIN MOTION
TO ADOPT
F.O.F.
(FPP 08-26)**

Hickey AuClaire made a motion seconded by Toavs to adopt staff report FPP 08-26 as findings-of-fact.

**SECONDARY
MOTION (Amend
F.O.F. #2)**

Toavs motioned and Hickey AuClaire seconded the motion to amend finding of fact #2 to read; The Flathead County Superintendant of Schools has requested a bus stop be established.

**ROLL CALL
VOTE (Amend
F.O.F. #2)**

On a roll call vote the motion passed unanimously.

**SECONDARY
MOTION (Add
F.O.F. #35)**

Toavs motioned and Hickey AuClaire seconded to add finding of fact #35 to read; Water well depths in the subdivision have been documented to be in excess of 500 feet.

**ROLL CALL
VOTE
(Add F.O.F. #35)**

On a roll call vote, the motion passed with Culpepper dissenting.

**SECONDARY
MOTION (Amend
F.O.F. #8)**

Cross motioned and AuClaire seconded the motioned to amend finding of fact to read; *Withdrawn*

**BOARD
DISCUSSION**

Toavs asked when a mail box should be set up the whole scheme of things.

The board discussed the issue.

Cross withdrew the motion, Hickey AuClaire withdrew her second.

**SECONDARY
MOTION (Amend
F.O.F. #15)**

Heim motioned and DeKort seconded to amend finding of fact #15 to read; The property has ecological and jurisdictional wetland areas that have been delineated by the applicant and the proposed 'wildlife corridors' are overlaid upon the delineated wetland areas with the exception of those located on Lots 2 and four.

**ROLL CALL
VOTE**
(Add F.O.F. #35)

On a roll call vote, the motion passed unanimously.

**SECONDARY
MOTION** (Add
F.O.F. #36)

Cross made a motion and DeKort seconded to add finding of fact #36 to read; The applicant has agreed to make guest houses not permitted within the subdivision.

**ROLL CALL
VOTE**
(Add F.O.F. #36)

On a roll call vote, the motion passed unanimously.

**SECONDARY
MOTION** (Strike
F.O.F. #30)

Culpepper moved to strike finding of fact #30.

The motion failed due to lack of second.

**BOARD
DISCUSSION**

DeKort asked for clarification on finding of fact #22.

Hogle had recommended that the wildlife corridors encompass all the wetlands on the preliminary plat, the most significant wetlands occurred on lot two and lot four. They were not included in the wildlife corridors. It was also recommended they be indicated on the final plat with 40 foot buffer zones, or no build zones.

DeKort asked if it was stated in the conditions.

Hogle said yes, it was.

**SECONDARY
MOTION** (Add
F.O.F. #37)

Mower motioned and Heim seconded to add finding of fact #37 to read; The applicant has offered to make Lot four 'open space'.

**BOARD
DISCUSSION**

Culpepper wanted to say how disappointed he was in this decision. He would support the motion, but thought there was a balance that could have been made between private property rights and saving the wet lands. He thought it would have been better suited to split the property in half or at least have a five acre minimum lot. But, because the applicant was willing to make this an open space, he would support it. He wanted to make it clear that he disagreed with that decision.

**ROLL CALL
VOTE**
(Add F.O.F. #37)

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

Harris said that the board might want to consider a finding regarding the water right for fire suppression.

**SECONDARY
MOTION (Add
F.O.F. #38)**

Mower motioned and Toavs seconded to add finding of fact #38 to read; It is unclear whether or not a water right permit is required for the fire suppression) water storage facility.

**ROLL CALL
VOTE
(Add F.O.F. #38)**

On a roll call vote, the motion passed unanimously.

**SECONDARY
MOTION (Amend
F.O.F. #11)**

Culpepper motioned and Heim seconded to strike the words *steep slopes* from finding of fact #11.

**BOARD
DISCUSSION**

Cross asked why staff disagreed with the striking of steep slopes from finding #11.

Hogel said the lot was not able to accommodate a drain field either due to slope or shallow ground water. As a solution, there were a number of drain field easements onto other lots.

Cross asked if Arendt had a comment.

Arendt said there was only one shared drain field.

Hogle said that was different. What he was talking about was lots that had to have a drain field on another lot.

Heim asked if there was more than one.

Hogle said yes and pointed out the lots on the map.

Heim asked about lot #9 and where the drain field was for that lot.

Hogle said there was a state law which allowed an exemption from the drain field being shown on lots 20 acres or more due to the assumption that there was enough area to reasonably accommodate the drain field.

Heim withdrew his second.

The motion failed due to the lack of a second.

DeKort asked for clarification on finding of fact #16. He asked if the wet lands mentioned were on lot four or the wet lands on the proposal.

Hogle said he intended it to be for lot four.

**SECONDARY
MOTION (Amend
F.O.F. #16)**

DeKort motioned and Au Claire seconded to amend finding of fact #16 to read; The majority of Lot 4 has wetland/riparian vegetation characteristics, and standing surface waters indicate very shallow depths to groundwater. Due to environmental and wildlife concerns staff recommends the wetlands *on Lot 4* be dedicated as Common Area/Open Space and the Lot 4 not be approved as a residential lot.

**BOARD
DISCUSSION**

Culpepper wanted clarification on a previous motion concerning lot four.

DeKort said his motion did not pertain to all the wet lands, just the wetlands on lot four.

**ROLL CALL
VOTE
(Amend F.O.F. #16)**

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

DeKort mentioned on finding of fact #18, he had no problem with leaving it as a no build zone on the wild life corridors, but on the wetlands, there should be a vegetative buffer included in the wording. As far as he knew, a no build zone just meant the owner could not build in the zone, they could mow, grow weeds, etc.

Hogle intended the 40 foot no build zone to be a combination of a no build zone and vegetative buffer. He said he was open to suggestions on wording. His attempt to deal with the situation was to build a finding then make a condition based on the finding. The condition would recommend wild life corridors as amended to include the wet lands on lot four. The wetlands on lot four would be indicated as a no build zone and also have a 40 foot buffer on it on the face of the final plat. He agreed it was a tricky situation.

**SECONDARY
MOTION (Amend
F.O.F. #18)**

Toavs motioned and DeKort seconded to amend finding of fact #18 to read; Adverse effects of the proposed subdivision on the natural environment may be minimized and acceptable with the imposition of conditions requiring a stormwater management

plan to be developed as approved by the Montana DEQ, for the developer to take necessary steps to manage noxious weeds on site, requiring a note to be placed on the face of the final plat stating that future owners of Lots are required to abide by the Dust Control Plan during and after site construction, requiring a note to be placed on the face of the final plat stating that guest houses are prohibited and requiring a "No Build Zone" encompassing all delineated wetlands buffered by a 40 foot vegetative buffer to be shown on the face of the final plat.

**ROLL CALL
VOTE**

(Amend F.O.F. #18)

On a roll call vote, the motion carried unanimously.

**BOARD
DISCUSSION**

Cross asked if there was a finding regarding the late comer's agreement.

DeKort said #7 concerned the agreement.

Cross was not certain a late comer's agreement was justified in this case. It was his recollection at the time the application first came before the board, the paving of the road was one of the conditions, and there was no mention of a late comer's agreement. It was something the applicants were willing to do. He thought it was a stretch for the applicants to ask for a late comer's agreement at this stage when it was after the road was paved. The neighbors would have disputed this issue if they knew eventually they would have to pay for the paving. He thought the timing was wrong to put the agreement in two years after the road had been paved.

The board and staff discussed the late comer's agreement at length.

**SECONDARY
MOTION**

(Amend F.O.F. #16)

Heim motioned and Au Claire seconded to amend finding of fact #16 to read; The majority of Lot 4 has wetland/riparian vegetation characteristics, and standing surface waters indicate very shallow depths to groundwater. Construction activities in the area would likely require 404 and/or 310 permits. Due to environmental and wildlife concerns staff recommends the wetlands on Lot 4 be dedicated as Common Area/Open Space and that Lot 4 not be approved as a residential lot.

**ROLL CALL
VOTE**
(Amend F.O.F. #16)

On a roll call vote, the motion passed unanimously.

**SECONDARY
MOTION**
(Amend F.O.F. #23)

Heim motioned and Cross seconded to amend finding of fact #23

**BOARD
DISCUSSION**

The board and staff discussed the road width and possible wording.

The motion was withdrawn.

**ROLL CALL TO
ADOPT F.O.F.**

On a roll call vote the motion passed with Culpepper dissenting.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
CONDITIONS**
(FPP 08-26)

Hickey AuClaire made a motion seconded by Toavs to adopt Staff Report FPP 08-26 and recommend approval to the Board of County Commissioners.

**SECONDARY
MOTION**
*(Amend
condition #21)*

DeKort motioned and Hickey AuClaire seconded to amend condition #21 to read; Guest houses shall not be permitted. The following statement shall appear on the face of the final plat: "Each lot shall be limited to one single-family residence. Guest houses are not permitted on any lot."

**BOARD
DISCUSSION**

Cross thought that something needed to be put on the final plat as well. He thought Hogle had written a specific condition which took into account both issues.

The board asked Hogle to reread his wording on the suggested condition.

ROLL CALL
*(Amend condition
#21)*

On a roll call vote, the motion passed unanimously.

**SECONDARY
MOTION**
*(Amend
condition #7)*

Hickey AuClaire motioned and Cross seconded to amend condition #7 to read; With the application for final plat, the applicant shall provide a Road Users' Agreement which requires each property owner to bear his or her pro-rata share for maintenance of the roads within the subdivision and those used for emergency egress to Browns Meadow Road. The Road Users'

Agreement shall be amended to require consent of the Flathead Country Commission in order to amend or nullify. [Section 4.7.16(e), FCSR]

ROLL CALL
(Amend condition #7)

On a roll call vote, the motion passed unanimously.

SECONDARY MOTION
(Strike condition #19)

Culpepper motioned to strike condition #19, Toavs seconded.

BOARD DISCUSSION

Cross asked the applicant if the stipulation that the houses were to have internal sprinkler systems was included in the covenants.

Wirtila said yes it was.

Harris said staff was comfortable with the condition being struck from the conditions.

Culpepper said condition #19 (internal sprinkler systems) was a building code regulation and it was against the law according to Montana Code Annotated 76-3-504. It was against the law to have building code regulations in subdivision regulations. It was so much so that a plaintiff brought a complaint and won the court case here in Montana because of a building code in a subdivision regulation. Flathead County did not have a Building Department, therefore, this situation was unenforceable and his conversations with insurance salesman revealed there were more claims for water damage due to sprinkler malfunctions than fire damage. Because this was against the law, it needed to come out of the conditions.

Cross asked if anyone had any conversations with a fireman on this issue.

Culpepper said he had and they were in support of it, which was conflicting evidence, but he had to go with what the law said.

There was a brief discussion on other standard conditions which had been put into the subdivision conditions in the past, which could qualify for building codes.

Harris said even if the condition was appropriate, there was no way to enforce it.

ROLL CALL
(Strike condition
#19)

On a roll call vote, the motion passed unanimously.

BOARD
DISCUSSION

Toavs asked staff if condition #22 had already been changed.

Hogle clarified that planning staff had been trying to work with the applicant on this issue. If the road had not already been paved at the applicant's cost, they would have been required to pave the amount decided by an impact formula. The only way a late comer's agreement could actually be approved in compliance with the current regulations was that the improvement had to be a condition of approval and had to be done to mitigate impacts to the primary review criteria.

Toavs asked if staff put in the condition so the applicant could have the late comer's agreement.

Hogle said yes.

Harris said the condition was put into the report because the applicant was not permitted to have others pay for their direct impact. Since they paved more than the required 2.6 miles, that was deducted from the total mileage and the remaining portion was subject to a late comer's agreement.

Cross said if someone came to staff for a subdivision with a paved road, they would not be allowed to have a late comer's agreement.

Harris agreed.

Cross said in this case, when the applicant brought the application to staff, the road was paved.

Harris said yes.

Hogle said this was the first instance of a late comer's agreement for a road improvement.

**SECONDARY
MOTION**

*(Strike
condition #22 and
#17)*

Cross made a motion and Culpepper seconded to strike conditions #22 and #17.

**BOARD
DISCUSSION**

Wirtila said the applicant would submit a letter stating no late comer's agreement would be pursued.

ROLL CALL

*(Strike condition
#22 and #17)*

On a roll call vote, the motion passed unanimously.

**SECONDARY
MOTION**

*(Amend
condition #23)*

Culpepper motioned and DeKort seconded to amend condition #23 to read; All delineated wetlands shall have a 40 foot wide vegetative buffer applied and shall be shown on the face of the final plat as "No Build Zone".

**BOARD
DISCUSSION**

DeKort asked where the number of 40 feet came from.

Hogle said it was an attempt to affect something that would be better than nothing and it was a compromise between the applicant and the natural environment. Without it, the regulations do not have a fixed standard for a setback. It was an attempt to basically reach a reasonable solution.

Harris said this was something the applicant agreed to further protect the wetlands.

ROLL CALL

*(Amend condition
#23)*

On a roll call vote, the motion passed unanimously.

**SECONDARY
MOTION**

*(Strike
condition #30)*

Culpepper motioned to strike condition #30.

The motion failed due to lack of a second.

**SECONDARY
MOTION**

*(Amend
condition #9)*

Heim motioned and Mower seconded to amend condition #9 to read; The proposed water, wastewater treatment, and stormwater drainage systems for the subdivision shall be reviewed by the Flathead City-County Health Department and approved by the Montana Department of Environmental Quality prior to final plat. [Section 4.7.13, FCSR]

ROLL CALL
(Amend condition #9)

On a roll call vote, the motion passed unanimously.

SECONDARY MOTION
(Amend condition #28)

Toavs motioned and Hickey AuClaire seconded to amend condition #28 to read; Written authorization from the U.S. Forest Service for the use, improvement, and firewise maintenance of USFS roads proposed for emergency egress purposes shall be submitted prior to final plat. The applicant shall provide evidence of emergency egress easements, containing no use restrictions, for a minimum of two routes in addition to the primary access points.

BOARD DISCUSSION

Mower said the only question he had was if the easement was perpetual.

The board discussed if they could stipulate that the easement be permanent.

ROLL CALL
(Amend condition #28)

On a roll call vote, the motion passed unanimously.

SECONDARY MOTION
(Amend condition #25)

Culpepper motioned and Heim seconded to amend condition #25 to read; Wetlands located on proposed Lot 2 and 4 shall be dedicated as "No Build Zones". Lot 4 shall be reconfigured and not be approved as a residential lot, and be incorporated as "Open Space".

ROLL CALL
(Amend condition #28)

On a roll call vote, the motion carried unanimously.

SECONDARY MOTION
(Strike condition #31)

Toavs motioned and Culpepper seconded to strike condition #31.

BOARD DISCUSSION

Cross clarified why staff recommended lot #9 be taken off the plat as sellable.

Mower asked if there was a condition they could put on a specific lot which would make the lot fire safe.

Harris said yes, there was, but the board needed to be specific as to what exactly needed to be done.

Toavs thought they could not eliminate lot 9 without eliminating lots 10 and 11 since the contours were the same.

Hogle said the topography was very similar on all three lots. He said lot 10 had an average slope of 24% average slope, lot 11 had 27% average slope and lot 9 had 32%. He explained how he arrived at his results. He pointed out in the subdivision regulations, a slope of greater than 30% qualified as high or extreme fire hazard.

DeKort said if the lot was divided and the greater slope area dedicated to open space, then the lot would no longer have a fire danger to it.

Cross asked Hogle if that was possible.

Hogle said it was possible, but then a whole other set of issues was opened. For example, the lot could be less than 20 acres.

The board and staff discussed whether or not there was possibility of the lot being fire wise.

ROLL CALL
*(Strike condition
#31)*

On a roll call vote, the motion passed with Mower dissenting.

**SECONDARY
MOTION**
*(Amend
condition #33)*

Toavs motioned and Hickey AuClaire seconded the motion to amend condition #33 to read; There shall be no further subdivision of lots or Open Space until future zoning would allow, and the following note shall appear on the face of the final plat: "There shall be no further subdivision of lots or Open Space until future zoning would allow".

ROLL CALL
*(Amend condition
#33)*

On a roll call vote, the motion passed with Culpepper dissenting.

**BOARD
DISCUSSION**

Toavs mentioned the recharge system was based on a stream which he had witnessed as dry in the middle of summer. His concern was a lack of a way to refill the recharge system if there were a fire. He wanted to have a public well for the residents so everyone knew they had water, especially in that area where wells were so deep.

**SECONDARY
MOTION**
*(Add
condition #35)*

Toavs motioned and Mower seconded to add a condition concerning a public water system to supply the individual houses as well as the tanker system.

**BOARD
DISCUSSION**

The board, applicant and staff discussed the condition concerning a public water system for either the houses or recharge system or both at length.

The motion was withdrawn.

**SECONDARY
MOTION**
*(Amend
condition #4)*

Cross motioned and Toavs seconded the motion to amend condition #4 to read; The applicant shall comply with reasonable fire suppression and access requirements of the applicable fire district. A letter from the fire chief stating that the plat meets the requirements of the fire district shall be submitted with the application for Final Plat. The tanker recharge facility must have a continuous water supply without relying on surface water [Section 4.7.27, FCSR]

**BOARD
DISCUSSION**

Heim asked if that requires a water right.

Cross said it did, but he thought the applicant could obtain the water right a lot easier.

Arendt said it depended on the flow rate of the well, if it was kept under 35 gallons per minute, then it would be easier.

ROLL CALL
*(Amend condition
#4)*

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

Mower said he thought sometimes we allow words to overcome common sense. This was a subdivision which had problems. Putting this development where it was, was not a wise thing to do. For that reason he would not support it.

Cross said he would not support it either. He felt this was the second time he had seen basically the same application. There were problems with density and he could live with the density problem if the wildlife issue was mitigated by real clustering where a public water system and sewer system could be utilized and more open space applied to the land. In this case, there were comments from Fish, Wildlife and Parks Department that this area was a winter elk range and yet there was a wildlife corridor with a road traveling down the middle of it. To him, it

was like trying to pound a square peg into a round hole and it just did not work. He could not support the application.

Culpepper said people had come forward and stated they wanted lower density, but he did not hear from them exactly what the lower density number should be. He thought the decision they made tonight concerning this application was a landmark example of how this board and the county commissioners approve future subdivisions. When a developer comes in to subdivide and followed all of the county guidelines within the growth policy and in his opinion, went above and beyond what was recommended, followed the platting subdivision law and obtained all the prerequisite approvals from DEQ and DNRC, they should expect that the planning board recommend approval. When there was a group who got together which did not include all the area residents and continued to fight and wanted lower densities without giving a specific number with an unreasonable request not required by any county regulation or law and wanted their own will applied, then there was a problem. He thought it was time for the board to recognize the situation and recommend approval. He had spent many days and countless hours, as he did with everything which came before him, reading through the material. He could not find any grounds to deny this application. He certainly took an oath to uphold the law and all the regulations that was required of him and his responsibility as a planning board member was to make sure the developer did the same. With that, there was also public process and the developer needed to hear the public and take their views into consideration. He felt this application went above and beyond the requirements that were set forth by the county. He felt if the board could not approve this subdivision, then they should not be in the process of approving any subdivision. In his opinion he thought this application was probably one of the best subdivisions he had seen since he had been on the board. He expected it would probably be one of the best laid out, best planned subdivision in the future. He agreed with a previous comment that the board needed to distinguish between fact and emotion. It had become obvious, based on the information he read, that those who were in opposition did not want the subdivision approved and would go to all means to stop it. He could not agree to that, so he would vote yes.

Hickey AuClaire wanted to say she would support this project based on the subdivision process. She did not like the subdivision, she thought clustering would have been a better

project for the area to support the various challenges presented with it.

Heim said he would support the project as well. This was land which had been over logged, it was not public land and this project would clean it up and make a nice place out of it. He could not think of any reason to deny it. They had complied with all the rules and regulations.

DeKort said he didn't support it last time, and he could not support it this time because it was basically the same project. The applicant took the same piece of land and cut it up into seventy pieces instead of seventy four but did not mitigate the wildlife concerns or ground water concerns, which could have been mitigated by clustering. He could not support it.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
(FPP 08-26)**

On a roll call vote the motion passed with Mower, Cross and DeKort dissenting.

**COMMITTEE
REPORTS**

Toavs expressed concerns about committee A's mapping project and the fact the work and effort which had been put into the mapping effort which would not be regulatory. The committee agreed that there was no way they could get a full zoning map through. They decided to come before the board say they were going to scrap the predictability map and ask if there were any other maps the board thought would be useful.

Mower said what the board was trying to move towards was something to help so that they did not have the issue that they had tonight with the application. Density was the issue.

The board and staff discussed the pros and cons of the project at length.

OLD BUSINESS

None.

NEW BUSINESS

None.

ADJOURNMENT The meeting was adjourned at approximately 12:20 am. The next meeting will be held at 6:00 p.m. on March 25, 2009.

Gordon Cross, President

Donna Valade, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 4/29/09